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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|------------------------------|------------------|
| 10/671,123 | 09/24/2003 | Sebastian Schmidt | INTECH 3.0-037 02 P 01514 | 7275 |
| 530 | 7590 | 04/15/2005 | | EXAMINER |
| LERNER, DAVID, LITTENBERG, KRUMHOLZ & MENTLIK 600 SOUTH AVENUE WEST WESTFIELD, NJ 07090 | | | BREWSTER, WILLIAM M | |
| | | | ART UNIT | PAPER NUMBER |
| | | | | 2823 |

DATE MAILED: 04/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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|------------------------------|---------------------|----------------|
| Office Action Summary | Application No. | Applicant(s) |
| | 10/671,123 | SCHMIDT ET AL. |
| | Examiner | Art Unit |
| | William M. Brewster | 2823 |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 27 January 2005.
 2a) This action is **FINAL**. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-4 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 1-4 is/are rejected.
 7) Claim(s) _____ is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
 Paper No(s)/Mail Date _____

4) Interview Summary (PTO-413)
 Paper No(s)/Mail Date. _____

5) Notice of Informal Patent Application (PTO-152)
 6) Other: _____

DETAILED ACTION

The following rejection has been incorporated from the Non-Final Rejection sent 27 September 2004. Republishing is for convenience:

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-4 are rejected under 35 U.S.C. 102(e) as being anticipated by Tomita, U.S. Publication No. 2003/0102562 A1.

Tomita anticipates a method for use in fabricating a chip, the method comprising the steps of: in fig. 1, determining a density and location at least one functional area of a layer 9; and adding dummy structures said layer as a function of the determined density and determined location 11a and 11b, p. 4, ¶ 71;

limitations from claims 2 and 4, the method wherein for at least one of the dummy structures, the adding step includes the steps of: determining a placement said one dummy structure as a function the width and density of functional areas within predetermined distance of a

location; and determining size of said one dummy structure as a function of the determined placement, p. 4, ¶ 73-76; limitations from claims 3 and 4, the method claim further comprising determining a shape of said one dummy structure as a function of the determined size, p. 4, ¶ 76.

Response to Arguments

Applicant's arguments filed 27 January 2005 have been fully considered but they are not persuasive. Applicant argues that Tomita does not anticipate the application's independent claims as the application states, "a function of the determined density and determined location". Applicant argues that Tomita, by using patterns *regularly arranged* and simply discloses filling vacant spaces with either a large or small dummy structure *regardless of the density and location of the active areas*.

Examiner respectfully disagrees with applicant's arguments. Examiner notes that 1) the claims are 'comprising' claims, 2) the claims contain no temporal limitations, 3) there is no specified way in the claim for the practitioner to perform the limitation of, "as a function of the determined density and determined location", and 4) examiner has a fiduciary duty to interpret claims as broadly as reasonably possible (see below). For 1) a comprising claim may have extra limitations added as long as they do not interfere with the enumerated ones. For 2) Tomita does determine the density and location of the functional area 9 in fig. 1, as stated above, and may add the location of the dummy layers after the location and the density of the functional areas. For 3) the adding of

large and “small dummy patterns 11a are regularly arranged so as to be inserted in the region of the gap around the actual pattern 9 where the large dummy patterns 11b can not be arranged” is in fact a function of the determined density and determined location.

For 4) Examiner must give claims their broadest reasonable interpretation, MPEP §2111, “During patent examination, the pending claims must be ‘given the broadest reasonable interpretation consistent with the specification.’ Applicant always has the opportunity to amend the claims during prosecution and broad interpretation by the examiner reduces the possibility that the claim, once issued, will be interpreted more broadly than is justified, *In re Pratter*, 415 F.2d 1393, 1404-05, 162 USPQ 541, 550-51 (CCPA 1969), *In re Morris*, 127 F.3d 1048, 1054-55, 44 USPQ2d 1023, 1027-28 (Fed. Cir. 1997).” Also see *In re Zletz*, 13 USPQ 2d. 1320 (Fed. Cir. 1989).

For the above reasons, the rejection is deemed proper.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to William M. Brewster whose telephone number is 571-272-1854. The examiner can normally be reached on Full Time.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Olik Chaudhuri can be reached on 571-272-1855. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



11 April 2005
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